

**Introduced by Senator Bowen**February 21, 2003

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An act to amend Section 25322 of the Public Resources Code, relating to the State Energy Resources Conservation and Development Commission.

## LEGISLATIVE COUNSEL'S DIGEST

SB 772, as introduced, Bowen. State Energy Resources Conservation and Development Commission: reports: confidentiality and disclosure.

Existing law requires the State Energy Resources Conservation and Development Commission to manage a data collection system for obtaining information necessary to develop specified energy policy reports and analyses and energy shortage contingency planning efforts, and to support other duties of the commission, as prescribed. Existing law requires that the data collection system include specified requirements regarding the confidentiality of the information collected by the commission. Subject to specified confidentiality requirements, existing law authorizes the commission to grant requests for disclosure of records of information collected by the commission for the data collection system.

This bill would require the commission to grant a disclosure request if disclosure will not result in an unfair competitive disadvantage to the person that submitted the information, unless the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing the information, or unless another applicable provision of law exempts the information from disclosure.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



*The people of the State of California do enact as follows:*

SECTION 1. Section 25322 of the Public Resources Code is amended to read:

25322. (a) The data collection system managed pursuant to Section 25320 shall include the following requirements regarding the confidentiality of the information collected by the commission:

(1) ~~Any~~ A person required to present information to the commission pursuant to this section may request that specific information be held in confidence. The commission shall grant the request in ~~any of~~ the following circumstances:

(A) The information is exempt from disclosure under the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(B) The information satisfies the confidentiality requirements of Article 2 (commencing with Section 2501) of Chapter 7 of Division 2 of Title 20 of the California Code of Regulations, as those regulations existed on January 1, 2002.

(C) On the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(2) The commission may, by regulation, designate certain categories of information as confidential, which removes the obligation to request confidentiality for that information.

(3) ~~Any confidential~~ Confidential information pertinent to the responsibilities of the commission specified in this chapter that is obtained by another state agency, or the California Independent System Operator or its successor, shall be available to the commission and shall be treated in a confidential manner.

(4) Information presented to or developed by the commission and deemed confidential pursuant to this section shall be held in confidence by the commission. Confidential information shall be aggregated or masked to the extent necessary to assure confidentiality if public disclosure of the specific information would result in an unfair competitive disadvantage to the person supplying the information.

(b) Requests for records of information shall be handled as follows:

(1) If the commission receives a written request to publicly disclose information that is being held in confidence pursuant to paragraph (1) or (2) of subdivision (a), the commission shall provide the person making the request with written justification for the confidential designation and a description of the process to seek disclosure.

(2) If the commission receives a written request to publicly disclose a disaggregated or unmasked record of information designated as confidential under paragraph (1) or (2) of subdivision (a), notice of the request shall be provided to the person that submitted the record. Upon receipt of the notice, the person that submitted the record may, within five working days of receipt of the notice, provide a written justification of the claim of confidentiality.

(3) The commission or its designee shall rule on a request made pursuant to paragraph (2) on or before 20 working days after its receipt. The commission shall deny the request if the disclosure will result in an unfair competitive disadvantage to the person that submitted the information. *If disclosure will not result in an unfair competitive disadvantage to the person that submitted the information, the commission shall grant the request unless the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing the information, or unless another applicable provision of law exempts the information from disclosure.*

(4) If the commission grants the request pursuant to paragraph (3), it shall withhold disclosure for a reasonable amount of time, not to exceed 14 working days, to allow the submitter of the information to seek judicial review.

(c) ~~No information~~ *Information* submitted to the commission pursuant to this section is *not* confidential if the person submitting the information has made it public.

(d) The commission shall establish, maintain, and use appropriate security practices and procedures to ensure that the information it has designated as confidential, or received with a confidential designation from another government agency, is protected against disclosure other than that authorized using the procedures in subdivision (b). The commission shall incorporate the following elements into its security practices and procedures:

1 (1) Commission employees shall sign a confidential data  
2 disclosure agreement providing for various remedies, including,  
3 but not limited to, fines and termination for wrongful disclosure  
4 of confidential information.

5 (2) Commission employees, or contract employees of the  
6 commission, shall only have access to confidential information  
7 when it is appropriate to their job assignments and if they have  
8 signed a nondisclosure agreement.

9 (3) Computer data systems that hold confidential information  
10 shall include sufficient security measures to protect the data from  
11 inadvertent or wrongful access by unauthorized commission  
12 employees and the public.

13 (e) Data collected by the commission on petroleum fuels in  
14 Section 25320 shall be subject to the confidentiality provisions of  
15 Sections 25364 to 25366, inclusive.

